

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESUS DIAZ,

Plaintiff,

v.

E. GONZALES,

Defendant.

No. 2:24-cv-1507 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

6 Plaintiff alleges that he was denied a single visit with an attorney by defendant, a
7 correctional officer. While prisoners are entitled to contact visits with legal counsel as a part of
8 the right to access courts, Ching v. Lewis, 895 F.2d 608, 610 (9th Cir. 1990), denial of one visit
9 does not amount to denial of contact visits per se, or the denial of access to courts. For these
10 reasons, plaintiff’s complaint fails to state a claim upon which relief can be granted under federal
11 law. Plaintiff’s complaint must be dismissed. The court will, however, grant leave to file an
12 amended complaint.

13 Plaintiff is informed that if he chooses to amend, the court cannot refer to a prior pleading
14 in order to make plaintiff’s amended complaint complete. Local Rule 220 requires that an
15 amended complaint be complete in itself without reference to any prior pleading. This is because,
16 as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay,
17 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading
18 no longer serves any function in the case. Therefore, in an amended complaint, as in an original
19 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

20 In accordance with the above, IT IS HEREBY ORDERED that:

21 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted.

22 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
23 shall be collected and paid in accordance with this court’s order to the Director of the California
24 Department of Corrections and Rehabilitation filed concurrently herewith.

25 3. Plaintiff’s complaint is dismissed.

26 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
27 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
28 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket

number assigned this case and must be labeled "Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: September 8, 2024



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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